

1. Information Disclosure Statement

Applicant is re-submitting the documents cited in the Information Disclosure Statement submitted on March 6, 2008 herewith for the Examiner's consideration. In particular, each of the citations previously submitted on the PTO-1449 form were crossed out, with the returned PTO-1449 form stating,

NOT PRIOR ART NOR NON PATENT LITERATURE

CITATIONS DO NOT INCLUDE AUTHOR OR TITLE, FOR NON PATENT LITERATURE

However, it is Applicant's belief that the term "information" in 37 C.F.R. §1.56 is to be interpreted broadly. Additionally, the citations come from co-pending U.S. Patent Applications 10/499,182; 10/518,692; 10/577,270; and 11/628,628. Accordingly, Applicant is re-submitting the documents previously provided to the Office for consideration as citations AA thru AK on the PTO-1449 form submitted herewith. Therefore, the Examiner is respectfully requested to consider and acknowledge the documents cited on the submitted PTO-1449 form, initial the submitted PTO-1449 form, and return the form to Applicant.

2. Double Patenting Rejection

The Office Action states,

Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071), Pelliconi, et al, newly cited. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents may overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. The compositions may have identical characteristics.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

RESPONSE

Applicant respectfully traverses the rejection of claims 1-10.

First and foremost, Applicant respectfully traverses the current rejection given the Examiner's concession in the Reasons for Allowance in the Notice of Allowance mailed February 22, 2008 for the instant application. In particular, the Reasons for Allowance states, in part,

Further, it is agreed with applicants that the claims of copending application SN 10/499,182 (US 2006/0047071) do not provide sufficient bases to reject the claims as being double patenting. The copending application requires additional constituents that provide different results from those recited. The second component of the copending application requires a two-part blend which is not obvious from the instant claimed invention. The instant claims are deemed to be patentable over the copending application, as pointed out by applicants in the Response of 4 February 2008.

Accordingly, since the Examiner has acknowledged the claims for the instant application are patentably distinct from the claims of co-pending U.S. Patent Application Serial no. 10/499,182, Applicant respectfully believes the current rejection should be withdrawn.

Notwithstanding, since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. §103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of nonobviousness.

The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Additionally, any obviousness-type double patenting rejection should make clear:

- (A) The differences between the subject matter defined by the conflicting claims - a claim in the cited document compared to a claim in the application; and
- (B) The reasons *why* a person of ordinary skill in the art would conclude that the subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited document.

Moreover, when considering whether the subject matter defined in a claim of an application would have been an obvious variation of the subject matter defined in the claim of a patent, or another patent application, **the disclosure of the patent or other patent application may not be used as prior art.** See *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992), (Emphasis added).

With respect to the current rejection, currently pending claims 1-6 and 11 are directed towards polyolefin compositions; claims 7-9 are directed towards a process; and claim 10 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1-11) for the instant application are submitted herewith as ATTACHMENT A.

With respect to U.S. Patent Application Serial No. 10/499,182, currently pending claims 1, 3, and 5 are directed towards polyolefin compositions; and claim 9 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1, 3, 5, and

9) for U.S. Patent Application Serial No. 10/499,182 are submitted herewith as ATTACHMENT B.

Currently pending claims 1-6 and 11:

Claim 1 of the current application recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Currently pending claim 1 of U.S. Patent Application Serial No. 10/499,182 recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow

rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

Firstly, Applicant respectfully traverses the Examiner's assertion on page 3, lines 3-6, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents **may** overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. (Emphasis added)

However, even if the constituents of the currently pending claims do overlap with the constituents of the currently pending claims for co-pending application 10/499,182, which Applicant respectfully denies as discussed in more detail below, this in and of itself is not sufficient to establish a *prima facie* case of double patenting. See MPEP §804 and §804 II. In fact, in order to establish a *prima facie* case of obviousness-type double patenting, it is incumbent on the Examiner to: (I) determine the scope and content of the claims at issue; (II) determine the differences between the scope and content of the claims at issue; (III) determine the level of ordinary skill in the pertinent art; and (IV) evaluate any objective indicia of nonobviousness. Additionally, any obviousness-type double patenting rejection should make clear: (A) the differences between the inventive subject matter defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the inventive subject matter

defined in the claim at issue is anticipated by, or would have been an obvious variation of, the inventive subject matter defined in a claim of the co-pending application. See MPEP §804(I)(B)(1). However, since the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited co-pending U.S. Patent Application, Applicant respectfully traverses the current rejection. Therefore, for this reason alone, Applicant respectfully believes the rejection should be withdrawn.

Notwithstanding the above, as outlined in Applicant's response submitted January 31, 2008, the current application claims, in part, polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more;

- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more; and
- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, U.S. Patent Application Serial No. 10/499,182 currently claims polyolefin compositions comprising a different component 1), a different component 2), and different final properties. In particular, component 1) of U.S. Patent Application Serial No. 10/499,182, does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in the current application comprises a copolymer of ethylene; and the final polyolefin composition comprises different final properties. Accordingly, Applicant respectfully believes the compositions are not "not patentably distinct from each other", as purported by the Examiner.

With respect to claims 2-6 and 11, each of the aforementioned claims depends directly or indirectly from currently pending claim 1, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 1-6 and 11 are patentably distinct from claims 1, 3, 5, and 9 in co-pending U.S. Patent Application Serial No. 10/499,182.

Currently pending claims 7-9:

Claim 7 of the current application recites,

A process for producing polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g, the process being carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and the catalyst used in the preceding step.

Applicant respectfully believes none of claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182 recite the same, or an obvious variant, of currently pending claim 7. In fact, at the time of this response, U.S. Patent Application Serial No. 10/499,182 does not recite any process claims.

Notwithstanding this fact, Applicant respectfully traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting

claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (I)(B)(1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 8-9, each of the aforementioned claims depends directly or indirectly from currently pending claim 7, and necessarily includes all of the limitations therein. As such, Applicant respectfully believes claims 7-9 are patentably distinct from claims 1, 3, 5, and 9 in co-pending U.S. Patent Application Serial No. 10/499,182.

Currently pending claim 10:

Claim 10 of the current application recites,

Injection moulded articles comprising polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α-olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α-olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

As with claim 1, Applicant respectfully traverses the Examiner's assertion on page 3, lines 3-6, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents **may** overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. (Emphasis added)

However, as outlined *supra*, even if the constituents of the currently pending claims do overlap with the constituents of the currently pending claims for co-pending application 10/499,182, which Applicant respectfully denies, this in and of itself is not enough to establish a *prima facie* case of double patenting. See MPEP §804 and §804 II. Therefore, as with claim 1, Applicant traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory,

obviousness-type double patenting. See MPEP §804(I)(B)(1). As such, notwithstanding the above, Applicant respectfully believes the rejection should be withdrawn.

Notwithstanding, Applicant respectfully believes claim 10 recites, in part, injection moulded articles comprising polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α-olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α-olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C₄-C₁₀ α-olefin(s) of 4.5% or more;
- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α-olefin(s) of 2.3 or more; and
- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, claim 9 of U.S. Patent Application Serial No. 10/499,182 currently claims injection moulded articles comprising polyolefin compositions comprising a different component 1), a different component 2), and different final properties. In particular, component 1) of claim 9 of U.S. Patent Application Serial No.

10/499,182, does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in claim 10 of the current application comprises a copolymer of ethylene; and the final polyolefin composition of the injection moulded article comprises different final properties. Accordingly, Applicant respectfully believes neither the compositions, nor the injection moulded articles, are "not patentably distinct from each other" as purported by the Examiner.

As such, Applicant respectfully believes claim 10 is patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

In light of the above, Applicant respectfully believes claims 1-11 are patentably distinct from claims 1, 3, 5, and 9 of copending U.S. Patent Application Serial No. 10/499,182. As such, Applicant respectfully requests the current rejection to be withdrawn.

3. Double Patenting Rejection

The Office Action states,

Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/577,270 (US 2007/0078224), Dominic et al, newly cited. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents may overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents.

The compositions may have identical characteristics. Even when the third constituent is included, the compositions may be identical since the instant claims do not exclude other components.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

RESPONSE

Applicant respectfully traverses the rejection of claims 1-11. First and foremost, the instant application has a filing date of December 20, 2004, whereas co-pending U.S. Patent Application Serial No. 10/577,270 has a filing date of April 26, 2006. Accordingly, Applicant respectfully traverses the current rejection since,

If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

See MPEP §804 (I) (B) (1). Therefore, in conjunction with Applicant's comments in section 2 of this response, Applicant respectfully believes the instant rejection should be withdrawn.

Notwithstanding, since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are

applied for establishing a background for determining obviousness under 35 U.S.C. §103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of nonobviousness.

The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Additionally, any obviousness-type double patenting rejection should make clear:

- (A) The differences between the subject matter defined by the conflicting claims - a claim in the cited document compared to a claim in the application; and
- (B) The reasons *why* a person of ordinary skill in the art would conclude that the subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited document.

Moreover, when considering whether the subject matter defined in a claim of an application would have been an obvious variation of the subject matter defined in the claim of a patent, or another patent application, **the disclosure of the patent or other patent application may not be used as prior art.** See *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992), (Emphasis added).

With respect to the current rejection, currently pending claims 1-6 and 11 are directed towards polyolefin compositions; claims 7-9 are directed towards a process; and claim 10 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1-11) for the instant application are submitted herewith as ATTACHMENT A.

With respect to U.S. Patent Application Serial No. 10/577,270, currently pending claims 14-25 are directed towards propylene polymer compositions; and claim 26 is directed towards the propylene polymer compositions are obtained by a process (i.e., product by process). All currently pending claims for U.S. Patent Application Serial No. 10/577,270 are submitted herewith as ATTACHMENT C.

Currently pending claims 1-6 and 11:

Claim 1 of the current application recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of

ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and

2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Firstly, the current Office Action states,

Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1-26** of copending Application No. 10/577,270 (US 2007/0078224), Dominic et al, newly cited. (Emphasis added)

However, claims 1-13 in co-pending U.S. Patent Application Serial No. 10/577,270 were cancelled in lieu of claims 14-26 presented via Preliminary Amendment. Accordingly, Applicant respectfully traverses the instant rejection with respect to claims 1-11 being rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-13 in co-pending U.S. Patent Application Serial No. 10/577,270.

As for the instant rejection with respect to claims 14-26 of co-pending U.S. Patent Application Serial No. 10/577,270, currently pending claim 14 of U.S. Patent Application Serial No. 10/577,270 recites,

A propylene polymer composition comprising components:

a) from 50% to 90% by weight of a propylene homopolymer or a propylene copolymer containing up to 5% by mol of derived units of C₂-C₂₀ alpha-olefins, comprising:
(i) a polydispersity index greater than 3;
(ii) a melt flow rate, as measured at 230°C under a load of 2.16 kg, greater than 1 dg/min; and
(iii) a fraction soluble in xylene at 25°C greater than >1%

b) from 5% to 25% by weight a copolymer of ethylene and one or more derived units of C₄-C₂₀ alpha-olefins comprising:
(i) a content of ethylene derived units higher than 50% by mol and lower than 92% by mol;
(ii) an intrinsic viscosity higher than 1.2 dL/g and lower than 6 dL/g;
(iii) a density ranging from 0.850 to 0.890 g/cm³; and
(iv) a crystallinity content, expressed as an enthalpy of fusion, lower than 62 J/g

c) from 5% to 25% by weight of a copolymer of propylene and ethylene comprising:
(i) a content of propylene derived units higher than 50% by mol and lower than 92% by mol;
(ii) an intrinsic viscosity higher than 2 dL/g and lower than 6 dL/g;
(iii) a density ranging from 0.850 to 0.890 g/cm³;
(iv) a value of a product of reactivity ratios r₁xr₂ lower than 2; and
(v) a crystallinity content, expressed as an enthalpy of fusion, lower than 45 J/g

wherein a weight ratio between component b) and the sum of component b) and component c) is equal to or higher than 0.5 and less than or equal to 0.9.

Firstly, Applicant respectfully traverses the Examiner's assertion on page 3, lines 13-16, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents **may** overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. (Emphasis added)

However, as outlined *supra*, even if the constituents of the currently pending claims do overlap with the constituents of the currently pending claims for co-pending application 10/577,270, which Applicant respectfully denies, this in and of itself is not enough to establish a *prima facie* case of double patenting. See MPEP §804 and §804 II. In fact, in order to establish a *prima facie* case of obviousness-type double patenting, it is incumbent on the Examiner to: (I) determine the scope and content of the claims at issue; (II) determine the differences between the scope and content of the claims at issue; (III) determine the level of ordinary skill in the pertinent art; and (IV) evaluate any objective indicia of nonobviousness. Additionally, any obviousness-type double patenting rejection should make clear: (A) the differences between the inventive subject matter defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the inventive subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the inventive subject matter defined in a claim of the co-pending application. See MPEP §804(I)(B)(1). However, since the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited co-pending U.S. Patent Application, Applicant respectfully

traverses the current rejection. Therefore, for this reason alone, Applicant respectfully believes the rejection should be withdrawn.

Notwithstanding the above, the current application claims, in part, polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more;
- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more; and
- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, U.S. Patent Application Serial No. 10/577,270 currently claims polyolefin compositions comprising a different component a), a different component b), and different final properties. In particular, component a) can comprises, in part, "up to 5% by mol of derived units of C₂-C₂₀ alpha-olefins", whereas component 1) of the instant application can comprise, "up to 15% of at least one ethylene and C₄-C₁₀ α -olefin(s)". Additionally, component a) of U.S.

Patent Application Serial No. 10/577,270 recites a different a MFR value, co-pending U.S. Patent Application Serial No. 10/577,270 further comprises a propylene/ethylene copolymer (i.e., component c), and the final polyolefin compositions of both applications comprises different final properties. Accordingly, Applicant respectfully believes the compositions are not "not patentably distinct from each other", as purported by the Examiner.

With respect to claims 2-6 and 11, each of the aforementioned claims depends directly or indirectly from currently pending claim 1, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 1-6 and 11 are patentably distinct from claims 14-26 in co-pending U.S. Patent Application Serial No. 10/577,270.

Currently pending claims 7-9:

Claim 7 of the current application recites,

A process for producing polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the

total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g, the process being carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and the catalyst used in the preceding step.

Applicant respectfully believes none of claims 14-26, with claims 1-13 being cancelled, in U.S. Patent Application Serial No. 10/577,270 recite the same, or an obvious variant, of currently pending claim 7. In fact, at the time of this response, U.S. Patent Application Serial No. 10/577,270 does not recite any process claims; currently pending claim 26 is a product-by-process claim as outlined *supra*.

Notwithstanding this fact, Applicant respectfully traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (I)(B)(1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 8-9, each of the aforementioned claims depends directly or indirectly from currently pending claim 7, and necessarily includes all of the limitations therein. As such, Applicant respectfully believes claims 7-9 are patentably distinct from claims 14-26 in co-pending U.S. Patent Application Serial No. 10/577,270.

Currently pending claim 10:

Claim 10 of the current application recites,

Injection moulded articles comprising polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Applicant respectfully believes none of claims 14-26, with claims 1-13 being cancelled, in U.S. Patent Application Serial No. 10/577,270 recite the same, or an obvious variant, of currently pending claim 7. In fact, at the time of this response, U.S. Patent

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Application Serial No. 10/577,270 does not recite any claims directed towards injection moulded articles.

Notwithstanding this fact, Applicant respectfully traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (I)(B)(1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

As such, Applicant respectfully believes claim 10 is patentably distinct from claims 14-26 in U.S. Patent Application Serial No. 10/577,270.

In light of the above, Applicant respectfully believes claims 1-11 are patentably distinct from claims 14-26 of co-pending U.S. Patent Application Serial No. 10/577,270. As such, Applicant respectfully requests the current rejection to be withdrawn.



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CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all the rejections, and allow all pending claims 1-11. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner with any questions or comments if it is believed such contact will expedite prosecution for this application.

Respectfully submitted,

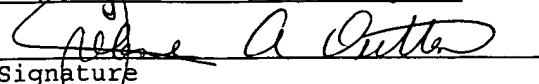
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on

August 13 2008

Signature

August 13 2008
Date



ATTACHMENT B

1. (Previously presented): Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

2. (Cancelled)

3. (Previously presented): The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 2.5 dl/g.

4. (Cancelled)

5. (Original): The polyolefin compositions of claim 1, having a Ductile/Brittle transition temperature equal to or lower than -25 °C.

6. (Cancelled)

7. (Cancelled)

8. (Cancelled)

9. (Previously presented): Injection moulded articles comprising polyolefin compositions which comprise, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

ATTACHMENT C

Claims 1 - 13: (Cancelled)

14. (Previously Presented) A propylene polymer composition comprising components:

- a) from 50% to 90% by weight of a propylene homopolymer or a propylene copolymer containing up to 5% by mol of derived units of C₂-C₂₀ alpha-olefins, comprising:
 - (i) a polydispersity index greater than 3;
 - (ii) a melt flow rate, as measured at 230°C under a load of 2.16 kg, greater than 1 dg/min; and
 - (iii) a fraction soluble in xylene at 25°C greater than >1%
- b) from 5% to 25% by weight a copolymer of ethylene and one or more derived units of C₄-C₂₀ alpha-olefins comprising:
 - (i) a content of ethylene derived units higher than 50% by mol and lower than 92% by mol;
 - (ii) an intrinsic viscosity higher than 1.2 dL/g and lower than 6 dL/g;
 - (iii) a density ranging from 0.850 to 0.890 g/cm³; and
 - (iv) a crystallinity content, expressed as an enthalpy of fusion, lower than 62 J/g
- c) from 5% to 25% by weight of a copolymer of propylene and ethylene comprising:
 - (i) a content of propylene derived units higher than 50% by mol and lower than 92% by mol;
 - (ii) an intrinsic viscosity higher than 2 dL/g and lower than 6 dL/g;

- (iii) a density ranging from 0.850 to 0.890 g/cm³;
- (iv) a value of a product of reactivity ratios $r_1 r_2$ lower than 2; and
- (v) a crystallinity content, expressed as an enthalpy of fusion, lower than 45 J/g

wherein a weight ratio between component b) and the sum of component b) and component c) is equal to or higher than 0.5 and less than or equal to 0.9.

15. (Previously Presented) The propylene polymer composition according to claim 14, wherein component a) further comprises no detectable 2,1 regioerrors in a ¹³C NMR spectrum recorded at a 300 MHz instrument.

16. (Previously Presented) The propylene polymer composition according to claim 14, wherein component b) further comprises a product of reactivity ratio $r_1 r_2$ lower than 5.

17. (Previously Presented) The propylene polymer composition according to claim 14, wherein component a) ranges from 50% to 80% by weight, component b) ranges from 25% to 9% by weight, and component c) ranges from 25% to 11% by weight.

18. (Previously Presented) The propylene polymer composition according to claim 14, wherein component b) comprises from 5% to 40% by mol. of the derived units of C₄-C₂₀ alpha-olefins.

19. (Previously Presented) The propylene polymer composition according to claim 14, wherein the intrinsic

viscosity of component b) is higher than 1.25 dL/g and lower than 3.0 dL/g.

20. (Previously Presented) The propylene polymer composition according to claim 14, wherein the enthalpy of fusion of component b) is lower than 50 J/g.

21. (Previously Presented) The propylene polymer composition according to claim 14, wherein component b) comprises 1-butene or 1-octene.

22. (Previously Presented) The propylene polymer composition according to claim 14, wherein component c) comprises from 50% to 80% by mol of propylene derived units, and from 50% to 20% by mol of ethylene derived units.

23. (Previously Presented) The propylene polymer composition according to claim 14, wherein the intrinsic viscosity of component c) is preferably higher than 2 dL/g and lower than 4 dL/g.

24. (Previously Presented) The propylene polymer composition according to claim 14, wherein the value of a product of reactivity ratios $r_1 r_2$ of component c) is lower than 1.8.

25. (Previously Presented) The propylene polymer composition according to claim 14, wherein the enthalpy of fusion of component c) is lower than 35 J/g.

26. (Previously Presented) The propylene polymer composition according to claim 14, wherein component b) is obtained by polymerizing ethylene and one or more C₂-C₂₀ alpha olefins in presence of a metallocene compound comprising at least one cyclopentadienyl moiety which is π -bonded to a central metal, and component c) is obtained by polymerizing propylene and ethylene in presence of a metallocene compound comprising at least one cyclopentadienyl moiety which is π -bonded to a central metal.